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SUPREME COURT, U.S.

No. 82-5102

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

ORLANDO JOHNSON, ~~et al.~~

Petitioner-Appellant

vs.

UNITED STATES Dist. Ct.
for the SOUTHERN Dist.
of OHIO, W. Div., et al.

Respondent-Appellees

JURISDICTIONAL STATEMENT
APPEAL FROM/ OR ALTERATIVELY
PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1.) Whether there was judicial usurpation of power by the U.S. District Court by its failure to enter judgment by default.

2.) Whether the U.S. Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

3.) Whether the federal court of appeal has decided a federal question in a way in conflict with applicable decisions of this Court.

4.) Whether there exist circumstances rendering the State corrective process ineffective to protect petitioner's rights to exhaust state court remedies 28 U.S.C. 2254 (b) in the four (4) grounds for habeas corpus relief.

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UNITED STATES Dist. Ct.
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Respondent-Appellees

APPEAL FROM/ OR ALTERATIVELY
PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The petitioner, Orlando Johnson, seeks direct appellate review/ or alteratively prays that a Writ of Certiorari issue to review the order of the United States Court of Appeals for the Sixth Circuit entered on April 19, 1982.

ORDERS AND ENTRY BELOW

The District Court filed Order Feb. 4, 1982, setting either "...trial or default on March 22, 1982..." A copy of order is attached as Appendix A.

The Court of Appeals entered its Order denying Petitioner's motion for Petition for Writ of Mandamus on March 11, 1982. A copy of the order is attached as Appendix B.

The District Court filed Entry March 5, 1982, vacating trial date set for March 22, 1982, and denying default judgment. A copy of the entry is attached as Appendix C.

The Court of Appeals filed Order April 19, 1982, denying Motion for Stay and Reconsideration on Petition for Writ of Mandamus. (Two 2 pages). A copy of the order is attached as Appendix D.

The Court of Appeals filed Order June 25, 1982, denying habeas corpus relief. (Two 2 pages). A verbatim typed copy of the order is attached as Appendix E.

JURISDICTION

On April 19, 1982, the Court of Appeals entered its Order denying petitioner's Motion for Stay and Reconsideration, Sixth Circuit Rule 8 (b) (c) MOTIONS AND MOTION PRACTICE, Fed. R. App. P. 27 (a) (b) (c) on Petition for Writ of Mandamus, 28 U.S.C. § 1651, Fed. R. App. P. 21 (a) (b).

The jurisdiction of this Court is invoked for direct appellate review under Rules of the Supreme Court of the United States, Title 28 United States Code, sections 1253 § 2101 (b) (c) as incorporated into petitioner's Notice of Appeal with Certificate of Service, stamped Received May 10, 1982, by John P. Hehman, Clerk U.S. Sixth Circuit Court of Appeals. A copy of the Notice of Appeal and Certificate of Service is attached as Appendix P.

Or, alteratively, petitioner seeks Writ of Certiorari under Rules of the Supreme Court of the United States, Rule 17, Considerations Governing Review on Certiorari, section 1. (a) (c); and section 1254. Courts of appeal; certiorari; appeal; certified questions (1) (3).

Further jurisdiction to this Court is conferred by case law of: Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977), one pertinent portion of the opinion which reads: "Indigent inmates must be provided at state expense with paper and pen to draft legal documents, with notarial services to authenticate them and stamps to mail them." At page 81.

Further jurisdiction is conferred to this Court by case law of: Schlagenhauf v. Holder, 379 U.S. 104, 85 S.Ct. 234 (1964), one pertinent portion of the opinion which reads: "The Federal Rules of Civil Procedure should be liberally construed, but they should not be expanded by disregarding plainly expressed limitations." At page 244.

Further jurisdiction to this Court is conferred by 28 U.S.C. Rule 55. Default (a) Entry. (b) Judgment. (1) (2)

Further jurisdiction to this Court is conferred by 28 U.S.C. Rule 37. Failure to Make or Cooperate in Discovery: Sanctions (b) Failure to Comply with Order. (C) pertinent part "...rendering a judgment by default against the disobedient party;"

Further jurisdiction to this Court is conferred by 28 U.S.C. § 1874. Actions on bonds and specialties

> "In all actions to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other specialty, wherein the forfeiture, breach, or nonperformance appears by default or confession of the defendant, the shall render judgment for the plaintiff for such amount as is due. If the sum is uncertain, it shall, upon request of either party, be assessed by a jury."

Further jurisdiction to this Court is conferred by Rule 19, SUPREME COURT OF THE UNITED STATES, Review on Certiorari--How Sought--Parties: 4. "Parties interested jointly, severally, or otherwise in a judgment may join in a petition for a writ of certiorari therefrom; or any one or more of them may petition separately; or any two or more of them may join in a petition. When two or more cases are sought to be reviewed on certiorari to the same court and involve identical or closely related questions, it will suffice to file a single petition for writ of certiorari covering all cases."

Further jurisdiction to this Court is conferred by 28 U.S.C. 2254 § 2241 § 2243.

Further jurisdiction to this Court is confereed by 28 U.S.C. Rule 49 Custody of prisoners in habeas corpus proceedings and/ or 28 U.S.C. RULES of the Supreme Court of the United States Rule 41 Custody of Prisoners in Habeas Corpus Proceedings: "Pending review in this Court of a decision in a habeas corpus proceeding commenced before a court, Justice, or judge of the United States for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this Rule. Upon application of a custodian showing a need therefor, the court, Justice or judge rendering the decision under review may make an order authorizing transfer and providing for the substitution of the successor custodian as a party."

Further jurisdiction to this Court, in petitioner 's habeas corpus, Johnson vs. Marshall, et al. Case No. 81-3741, is conferred by Notice of Appeal 28 U.S.C. § 1253 § 2101 (b) (c), from the United States Court of Appeals for the Sixth Circuit, being received by that Court, June 30, 1982. Appendix G.

Further jurisdiction to this Court is conferred by 28 U.S.C. Rule 21, The Petition for Certiorari, Rules of the Supreme Court.

Further jurisdiction to this Court is conferred by 28 U.S.C. Rule 46, (1)(2)(3)(4)(5)(6) Rules of the Supreme Court.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, 1st Amendment:

> Congress shall make no law...abridging...the right of the people to...petition the Government for a redress of grievances.

United States Constitution, 14th Amendment:

> ...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(Amended Substitute Senate Bill No. 76) AN ACT... enacted by the General Assembly of the State of Ohio. Sec. 9.87 (A). SECTION 6.. SECTION 7.
A verbatim typed copy of the pertinent sections of this Bill is attached as Appendix H.

STATEMENT OF THE CASE

November 28, 1979, Johnson vs. Jago, et al. Civil Action Case No. C-1-79-660, was filed under 28 U.S.C. § 1343. 42 U.S. § 1981 § 1983 § 1985, for being denied access to state and federal courts as guaranteed by the 1st and 14th Amendments the the U.S. Constitution, by an ongoing conspiracy from September 1978. Originally, Arnold R. Jago, Superintendent, Southern Ohio Correctional Facility, (hereinafter SOCF) Lucasville, Ohio; and, Paul Adams, Notary Public, State of Ohio, employed at SOCF, were the only two defendants, being sued in their official capities and individually. Demand for "JURY TRIAL" made and prayer for $145.000,00 in general damages and $20.000,00 in punitive damages sought. 1/

David S. Porter, Judge U.S. District Court signed the Order permitting said cause to proceed in forma pauperis 28 U.S.C. § 1915(a).

January 4, 1980, petitioner, Johnson, received Defendants' Motion for Extension of Time, until Jan. 22, 1980, to move or plead. Citing; S.D. Ohio R.3.10. Signed by John C. Stamatakos, Assistant Attorney General, State of Ohio.

1/ In April 1980, defendant Jago abandoned his employment as Superintendent, SOCF and Ronald C. Marshall was duly appointed as his successor.

January 8, 1980, Wallace B. Stein, Chief Record Clerk, SOCF personally served petitioner with Defendants' Motion to Dismiss and Memorandum in Support, signed by John C. Stamatakos, Counsel for defendants.

January 16, 1980, Order filed by the District Court granted De-Dendants until Jan. 22, 1980, to move or plead to the complaint. Signed by J. Vincent Aug. U.S. Magistrate.

January 24, 1980, petitioner Johnson's Motion in Opposition to Dismiss and Memorandum in Support; Motion for Leave to Amend Complaint and Memorandum in Support; attached Amended Complaint were filed in the District Court. In substance, restated the original Claims, and adding more facts, and 42 U.S.C. § 1986. 2/

According to letter dated Feb. 15, 1980, and copy of docket sheet of the proceedings from the District Court, on Jan. 24, 1980, petitioner's Motion for leave to Amend Complaint, and attached Amended Complaint were issued to Attorney General.

2/ Four (4) defendants were, also, added in their official capacities and individually: Bonding Company of Paul N. Adams, Notary Public; Lt. Crabtree, Mail & Visiting Department, SOCF; George F. Denton, Director Ohio Department of Rehabilitation and Corrections; James A. Rhodes, Governor, State of Ohio. 28 U.S.C. 15 (a)(b)(c)(d); and Rule 19(a). There was no change, at the time, in the amount of damages prayed for.

On Oct. 9, 1981, petitioner's habeas corpus 28 U.S.C. 2254 § 2241 § 2243, was filed in the District Court as Johnson vs. Marshall, et al. No. C-1-81-827, naming Ronald C. Marshall, Superintendent, SOCF as respondent, and attached Motion for an Order for Consolidation of Actions. 28 U.S.C. Rule 42(a); and pursuant to Rule 57 Declaratory Judgments 28 U.S.C. 2201 § 2202 Further relief (additional damages) of: $60.000,00 in general damages and for mental suffering and $15.000,00 in punitive damages from defendant Marshall, in his official capacity and individually; and $60.000,00 in general damages and for mental suffering and $15.000,00 in punitive damages from defendant Denton for causing petitioner to be transferred April 21, 1980, from SOCF during pendency of "other" federal habeas corpus proceeding, and not returning him to SOCF until September 1980, contrary to 28 U.S.C. Rule 49 Custody of prisoners in habeas corpus proceedings.

Oct. 9, 1981, the U.S. District Court denied petitioner's habeas corpus, Johnson vs. Marshall, et al. No. C-1-81-827. December 15, 1981, petitioner mailed a timely Expedited Appeal of said habeas corpus, and the petition for mandamus in the Civil Rights Action herein, to the U.S. Sixth Circuit Court of Appeals requesting consolidation, Sixth Circuit Rule 7 (d) Companion Cases (b) Advancement of Hearing, due to an identical issue, and other closely related issues.

Without comment, on consolidation motion, the Appeals Court severed the two (2) cases: assigned Case No. 82-8320, to the mandamus action Johnson vs. U.S. Dist. Ct. S.Dist. Ohio, W. Div. et al., and denied relief April 19, 1982. Assigned Case No. 81-3741, to habeas corpus action Johnson vs. Marshall, et al., and denied relief June 25, 1982.

March 26, 1980, petitioner's First Set of Interrogatories (75) directed for defendant Adams to answer, and Certificate of Service, dated same day, were mailed via Regular U.S. Mail to William J. Brown, Attorney General, State of Ohio, 30 East Broad St. Columbus, Ohio. 28 U.S.C. Rule 33.

November 4, 1980, Robert A. Steinberg, U.S. Magistrate, signed a Order which was filed Nov. 5, 1980, in the District Court which reads in part: "Plaintiff filed a Motion to file an Amended Complaint in this action and attached a copy of his proposed Amended Complaint ...It is hereby ORDERED that Defendants move or plead to Plaintiff's Amended Complaint within ten days of receipt of this order."

November 25, 1980, Wallace E. Stein, Chief Record Clerk, SOCF personally served petitioner with Answer of Defendants Jago and Adams to Plaintiff's Amended Complaint. The signature of J. Anthony Logan as Assistant Attorney General, State of Ohio, appears on this document in liew of John C. Stamatakos.

December 2, 1980, petitioner's Motion for Appointment of Counsel, U.S.C. Title 28 § 1915 was filed in the District Court.

Order issued Denying Petitioner's Request for Appointment of Counsel Dated: Jan. 9, 1981, signed Robert A. Steinberg, U.S. Magistrate, filed Jan. 14, 1981.

At the time of this writing the District Court has been silent on petitioner's Request for the Services of Legal Counsel Amicus Curiae from the United States Department of Justice, filed Jan. 28, 1981. 3/

3/ Petitioner seeks, here, to bring himself within the ambient of the ruling in the class action lawsuit against officials of the, State of Ohio, at the Western Reserve Psychiatric Habilitation Center, in Rone et al. v. Fireman, 473 F.Supp. 92 (1979), wherein the United States of America was Plaintiff Intervenor on behalf of the patients. From page 106 of the original typed Memorandum Opinion and Order filed June 18, 1979, in the, Rone, decision:

> "The defendants have failed to provide mentally ill persons involuntarily confined at Western Reserve for purpose of treatment ready access to community resources in violation of the Fourteenth Amendment."

From page 5 of, the original typed, Memorandum Opinion and Order in the Rone decision:

> "By Order of February 22, 1977, this Court granted the former motion and certified as the class represented by the named plaintiffs the following:
>
> All persons who have at any time since March 2, 1976, occupied, or will at any time during the pendency of this action occupy any ward or facility as patients at Western Reserve Psychiatric Habilitation Center (formerly Hawthorn den State Hospital)."

Petitioner, Johnson, was involuntarily confined at Western Reserve Psychiatric Habilitation Center December 6, 1978, to December 26, 1978.

February 11, 1981, among some of the documents mailed via U.S. Certified Mail to John C. Stamatakos, Assistant Attorney General, State of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio, were: Petitioner's First Set of Request for Admissions of Fact (10) for Defendant Adams to Answer. 28 U.S.C. Rule 36; and a "duplicate" copy of Petitioner's First Set of Interrogatories (75) for defendant Adams to Answer. 28 U.S.C. Rule 33.

March 19, 1981, Petitioner's Motion for Default Judgment and Notice of Application for Judgment and Hearing with attached Affidavit and Supporting Memorandum were filed in the District Court.

April 1, 1981, Petitioner's Supplementary Affidavit and offer of 27 Exhibits as Documentary Evidence Corroborating his Affidavit in Support of Motion for Default Judgment and Statement, were filed in the U.S. District Court.

May 21, 1981, petitioner received from the District Court an updated copy of the docket sheet of the proceedings in Johnson vs. Jago, et al. Case No. C-1-79-660. According to this document on July 15, 1980, "ORDER transferring case fm calendar of J. Porter to J. Speigel." August 8, 1980, "ORDER by J. Spiegel appointing J. St-Steinberg U.S. Magistrate to hear case & conduct hearings, etc."

Thus far, the District Court has not issued written or oral statement as to why this case was transferred from Judge Porter's calendar to Judge Speigel's calendar.

December 15, 1981, petitioner submitted a Petition for Writ of Mandamus, Case No. 82-8320, in the U.S. Sixth Circuit Court of Appeals to compell the U.S. District Court at Cincinnati, Ohio to rule on his Motion for Default Judgment filed March 19, 1981, in Johnson vs. Jago, et al. Case No. C-1-79-660.

The District Court, on Feb. 4, 1982, set the case for "...trial or default on March 22, 1982..." Appendix A.

March 5, 1982, petitioner-plaintiff, Johnson's, Offer of Stipulation to Consent Judgment or Settlement in Civil Action No. C-1-79-660, was filed in the District Court: offer to withdraw demand for $20.000,00 in punitive damages from defendants Jago and Adams; and withdraw $30.000,00 in punitive damages from defendants Marshall and Denton, if the state would agree to Consent Judgment or Settlement awarding petitioner, Johnson, $265.000,00 total general damages, on/ or prior to trial date scheduled for March 22, 1982. Defendants did not stipulate to this agreement.

Also, March 5, 1982, from 10:15 A.M. to 11:00., petitioner participated in a pretrial conference via three-way telephone conversation with U.S. District Court Judge, S. Arthur Spiegel and John C. Stamatakos, Assistant Attorney General. Entry was also filed by the District Court 3/5/82 vacating trial date set for March 22, 1982,

and denying default judgment. Appendix C. During the pretrial conference 3/5/82 John C. Stamatakos, Assistant Attorney General, did verbally agree to travel to SOCF on at least one day in the week prior to 3/22/82 to cooperate with petitioner, Johnson, in formulating another final pretrial order.

The Court of Appeals denied petitioner's Mandamus action, Case No. 82-8320, March 11, 1982. Appendix B.

March 26, 1982, the Court of Appeals filed petitioner's Motion for Stay and Reconsideration on Petition for Writ of Mandamus, Case No. 82-8320.

April 19, 1982, the Appeals Court denied petitioner's Motion for Stay and Reconsideration on Petition for Writ of Mandamus, Case No. 82-8320. Appendix D.

FOR CONSOLIDATION AND HEARING WITH:

Order filed June 25, 1982, by the U.S. Sixth Circuit Court of Appeals, denying relief in:Johnson vs. Marshall, et al. Case No. 81-3741, habeas corpus, filed in the Appeals Court December 17, 1981, as Expedited Appeal from the United States District Court for the Southern District of Ohio Western Division. The Brief is twenty (20) pages long, and cites twenty-six (26) state and federal cases in support; petitioner received respondent's Reply Brief January 20, 1982, prepared by Elizabeth M. Dean, Assistant Attorney General, State of Ohio; petitioner, Johnson's, twelve (12) page Reply Brief, citing eleven (11) state and federal cases in support was filed Feb. 5, 1982, in the Appeals Court. The four (4) grounds for habeas corpus relief are:

(1) DENIED SPEEDY TRIAL UNDER O.R.C. 2945.71-73 AND THE 6TH, AND 14TH AMENDMENTS TO U.S. CONSTITUTION.

(2) DENIED EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE 6TH AND 14TH AMENDMENTS TO U.S. CONSTITUTION.

(3) DENIED ACCESS TO STATE AND FEDERAL COURTS AS GUARANTEED BY 1ST AND 14TH AMENDMENTS U.S. CONSTITUTION.

(4) CONVICTIONS OBTAINED BY VIOLATION OF PROTECTION AGAINST DOUBLE JEOPARDY UNDER 5TH AND 14TH AMENDMENTS.

Jurisdiction of habeas corpus was conferred to the U.S. Sixth Circuit Court Appeals by Notice of Appeal and Request for Certificate of Probable Cause 28 U.S.C. 2253, being filed in U.S. District Court, Cincinnati, Ohio, Oct. 28, 1981, Nov. 5, 1981, the District Court granted Certificate of Probable Cause 28 U.S.C. 2253.

June 30, 1982, the United Stated Court of Appeals for the Sixth Circuit, Received petitioner's Notice of Appeal 28 U.S.C. 1253 & 2101 (b) (c) to the United States Supreme Court, from the Appeal Court's Order filed June 25, 1982, denying habeas corpus.

REASON FOR GRANTING THE WRIT

Where defendants have failed to plead or otherwise defend or make discovery as provided by the Federal Rules of Civil Procedure, due process and equal protection of the laws demand that judgment by default be entered on behalf of petitioner.

In Schlagenhauf v. Holder, this court established when "...the issue concerns the construction and application of the Federal Rules of Civil Procedure. It is thus appropriate for us to determine on the merits the issues presented and to formulate the necessary guidelines in this area." 85 S.Ct. at page 239 (1964).

In petitioner, Johnson's, original Statement of The Claim, Case No. C-1-79-660, filed November 28, 1979, the District Court, allegations are made in paragraph 3, "...during the past year (365) days, from September 17, 1978, through September 17, 1979, he has had only (3) three writs notarized..."

That on two (2) occasions, approximately 1:15 P.M. Monday, September 17, 1979, paragraph 5, and on April 23, 1979, paragraph 7, he requested defendant Adams to notarize documents to be filed in the Courts and that defendant Adams refused to notarize the documents.

In Defendants' Motion to Dismiss and Memorandum in Support of Motion dated Jan. 5, 1980, page -2- the second paragraph, defendant Adams admitted through Counsel, John C. Stamatakos: "The fact that Defendant refusedto notarize the four writs intended for the federal court did not deny Plaintiff his right of access to the courts, since Plaintiff could have prepared and signed his declaration to each writ." Referring to 28 U.S.C. 1746 Unsworn declarations under penalty of perjury.

In petitioner-plaintiff's Motion in Opposition to Dismiss and Memorandum in Support of Motion filed Jan. 24, 1980, in the District Court, he argued "...U.S.C.A. Title 28 §§ 1746 was not enacted by Congress to displace the function of Notary Publics throughout the various states." In fact, the legislative history of this statute as recorded in the Cong. Record Vol. 122, at page 5645 (1976) teaches its purpose to be that:

> "The requirement that the person who signs an affidavit must appear before a notary and be sworn can be inconvenient. For example, it may be necessary for the document to be executed during other than normal business hours. Further the document may have to be executed in another country for use in the United States... The legislation provides an alternative to affidavits and sworn documents when it is necessary to require verification of the truthfulness of what the document contains."

There were other witnesses present both times (9/17/79 and 4/23/79) When defendant Adams refused petitioner's request for notarial services, that said days were weekdays during "...normal business hours." On the latter date, as written here, April 23, 1979, he notarized document(s) for other prisoner(s) in petitioner's and other witnesses' presence. Paragraph 7, Amended Complaint filed Jan. 24, 1980, in the District Court.

By reason of defendant Adams' job assignment as Supervisor of Inmate Legal Services Department, SOCF and Notary Public, State of Ohio, he was required by law, to notarize petitioner's documents. Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977): "Indigent inmates must be provided at state expense with paper and pen to draft legal documents, with notarial services to authenticate them and stamps to mail them." At page 81.

In regards to discretionary review, Bounds v. Smith, this Court held that, "...review is generally granted only if a case raises an issue of significant public interest..." 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977), at page 82.

Petitioner's Conspiracy Theory:

Petitioner says, the instant action "...raises an issue of significant public interest..." Bound v. Smith, supra, at p. 82. Petitioner's Amended Complaint filed in the District Court Jan. 24, 1980, paragraph 1: "...Plaintiff is an American citizen of the race...commonly referred to as...black persons. The five named defendants herein: Jago, Adams, Crabtree, Denton, and Rhodes are white persons, employeed as either officers, agents, or servants of the State of Ohio." Paragraph 2: "Plaintiff has been in state's custody since May 1976..." Paragraph 6:

> "That pursuant to O.R.C. 5145.04, 5145.20, and 5145.22, the Ohio Department of Rehabilitation and Corrections is required to maintain records of prisoners in its custody; and that, from December 6, 1978 to December 26, 1978, plaintiff was involuntarily committed at the Western Reserve Psychiatric Habilitation Center (W.R.P.H.C.), and as the result of a well publicized class action law suit against the Superintendent of (W.R.P.H.C.) in which, Rhodes, was also a defendant, see, Rone v. Fireman, 473 F.Supp. 92 (1979). That, therefore, defendants Jago, Adams, Denton, and Rhodes knew, or should have known, that according to the ruling in Rone v. Fireman, supra, plaintiff's rights under the 14th Amendment to the U.S. Constitution were violated while at (W.R.P.H.C.), specifically; in that there was no notarial services, nor, a law library which plaintiff was allowed to make use of while at (W.R.P. H.C.). That plaintiff did submit a Habeas Corpus in pro se, to the Ohio Supreme Court, December 13, 1978, which was dismissed March 15, 1979, without hearing before that court. And, that, there was no affirmative action taken by said defendants to prevent a reoccurrence of the deprivation of plaintiff's right; to reasonable availability of notarial services, upon plaintiff's return to (S.O.C.F.) on April 11, 1979, which was contributory to the adverse ruling against plaintiff's Civil Rights Suits as described in count 5 of this complaint, depriving plaintiff of his "day in Court".

Thus far, at all times during the pendency of this action in the District Court, all named defendants, herein who were or are defendant Adams' superiors: Jago, and his successor Marshall; Denton, and Rhodes, all willingly joined the conspiracy to deny petitioner, Johnson, access to the Courts by their condoning or ratification of defendant Adams' actions, or inactions, omissions, and nonperformance of mandatory duties: this is so, because in the written and oral

communications petitioner has received from defendants through their counsel of record, they do not indicate they initiated any form of disciplinary proceedings against defendant Adams.

That defendants' actions or inactions et cetera, as described, herein, were motivated by: "...invidious class and race discrimination under color of state law..." Petitioner's Amended Complaint, paragraph 2.

Defendants Default:

The Court of Appeals Order filed April 19, 1982, denying petitioner's mandamus is not founded on facts and was decided in a way in conflict with applicable decisions of this Court. The Appeals Court makes a quantum leap from citing no relevent case law from the Sixth Circuit in this matter to citing: Kerr v. U.S. District Court, 426 U.S. 394 (1976).

Petitioner says, 28 U.S.C. Rules 15, Amended and Supplemental Pleadings (a) (b) (c) (d); Rule 19, Joinder of Persons Needed for Just Adjudication (a), were not at issue in the Kerr, decision, supra, thus, said case is inapplicable to the instant action.

Whereas, in the instant action, pursuant to petitioner's Motion for Leave To Amend Complaint, with the Amended Complaint attached filed in the District Court Jan. 24, 1980, 28 U.S.C. Rules 15, Supplemental Pleadings (a) (b) (c) (d); and Rule 19, (a) are cited.

Whether mandamus should issue turns, "primarily" upon the District Court's failure to enter judgment by default when defendants Jago, et al., did not plead or otherwise defend, per Order of the District Court filed Nov. 5, 1980, "...Pursuant to the liberal amendment provisions under Fed. R. Civ. P. 15 (a) the Court granted Plaintiff's Motion to Amend his Complaint...It is hereby ORDERED that Defendants move or plead to Plaintiff's Amended Complaint within ten days of receipt of this Order." Signed Robert A. Steinberg, United States Magistrate.

Only, defendants Jago and Adams responded to petitioner's Amended Complaint, and without obtaining an enlargement of time from the Court to plead or defend, they were in default of Service oftheir Answer to the Amended Complaint on petitioner until Nov. 25, 1980.

Defendant Adams' blanket refusal to make discovery: Petitioner's First Set of Interrogatories (75) March 26, 1980, and Feb. 11, 1981; Petitioner's First Set of Request for Admissions of Fact (10), also 3/11/81, 28 U.S.C. Rules 33, and 36, are supplemental reasons for entry of judgment by default. Pursuant to 28 U.S.C. Rule 37 (b) (c) (d).

"Refusal of defendant to obey court's orders constituted sufficient grounds for entry of a default judgment against him." From, Bonanza Intern., Inc. v. Corceller, 480 F.2d 613.

As a matter of law the allegations in petitioner's Amended Complaint filed Jan. 24, 1980, in the District Court should be taken as true, and the relief prayed for in his mandamus action granted.

The Entry filed March 5, 1982, by the District Court denying petitioner's Motion for Default Judgment was done without citing case law and federal rule and is a judicial usupation of power by encroachment upon the legislative branch of the federal government because it voids and nullified 28 U.S.C. Rules 15, and 37, and 55, and subdivisions therein; and voids and nullified Rules 33, and 36,

Without, excuse, defendants' counsel John C. Stamatakos, reneged on oral commitment made March 5, 1982, via telephone, to travel to SOCF and cooperate with petitioner in formulating another final pre-trial order.

By Appeals Court Order filed April 19, 1982, denying petitioner's mandamus, Case No. 82-8320, it has so far departed from the accepted, and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court as to call for an exercise of this Court's power of supervision

Key Link Between Petitioner's Mandamus and Habeas Corpus Actions:

As succinctly stated in both petitioner's Civil Rights Action and Habeas Corpus, herein, he claims to be "denied access to state and federal courts as guaranteed by 1st and 14th Amendments U.S. Constitution." After Order filed Feb. 4, 1982, by the District Court setting either "...trial or default on March 22, 1982..." Appendix A. The Court was, and is bound by the Rule in Holt v. Pitts, wherein, the U.S. Sixth Circuit Court of Appeals established:

> "...when an inmate's civil action reaches the trial stage and his claim proves sufficiently meritorious to survive motions for dismissal and summary judgment, a court must then take all reasonable steps necessary to insure that the inmate receives the fair 'day in Court' to which he is entitled. (... a district court must pursue several avenues in an effort to decide fairly the merits of an inmate's pro se civil rights action; these avenues include the issuance of a writ commanding the presence of the prisoner-plaintiff, a bench trial in the prison, the presentation of evidence by means of depositions, the appointment of counsel, and the postponement of the case if the plaintiff is to be released in a reasonable time)." 619 F.2d 558 (1980). At page 562.

Postponement of petitioner, Johnson's, Civil Rights Case is unreasonable because he is not eligible for release from state's custody, via parole under this term of imprisonment, until June 1986.

The District Court and Appeals Court denial of petitioner's Motion for Default Judgment and Mandamus and Habeas Corpus, while failing to grant him his "...day in Court..." as annunicated by Rule in Holt v. Pitts, 619 F.2d 558 (6th Cir. 1980) at page 562, affords petitioner no remedy at all, in law.

Petitioner requests the Court to fully review the Briefs, Motions, and Orders, filed in the U.S. Sixth Circuit Court of Appeals as Case No. 81-3741, habeas corpus, Expedited Appeal from the United States District Court for the Southern District of Ohio Western Division.

In summary: habeas corpus relief is founded on the grounds that upon petitioner's criminal convictions reversal: State v. Johnson, 57 Ohio App.2d 263, 387 N.E.2d 247 (June 22, 1978), after timely demand for speedy trial to the trial Court, Aug. 15, 1978, he was re-convicted April 2, 1979, on the same indictment in violation of the Ohio Revised Code, 90-day speedy trial mandate 2945.71-73. State v. Cross, 26 Ohio St.2d 270, 271 N.E.2d 264 (June 23, 1971) is controlling, wherein the Ohio Supreme Court ordered the accused discharged from state's custody under O.R.C. 2945.73, because of approximately a ten (10) month delay in bringing him to trial.

In the instant case, petitioner did experience substantial actual prejudice during delay in being brought to re-trial, and as more fully stated in his Amended Complaint filed Jan. 24, 1980, and is still pending as Johnson vs. Jago, et al. Civil Rights Complaint, Case No. C-1-79-660, U.S. Dist. Ct. Cincinnati, Ohio and as supported and sustained by the ruling in Rone et al. vs. Fireman, et al. 473 F.Supp. 92 (1979).

The Ohio Supreme Court; the U.S. Dist. Ct. at Cincinnati, Ohio and the U.S. Sixth Cir. Ct. of Apps., have had the opportunity to rule on petitioner's grounds for habeas relief, in short: (1) "... denied speedy trial..."; (2) "...denied effective assistance of counsel..."; (4) "...double jeopardy..."; (3) "...denied access to state and federal Courts..." is admitted by the state as the result of defaulted answer to petitioner's Amended Complaint, filed Jan. 24, 1980, in Johnson vs. Jago, et al. supra, U.S. Dist. Ct. Cincinnati, Ohio.

The U.S. Sixth Cir. Ct. of Apps., is in err in denying habeas relief, Order June 25, 1982, without appointment of counsel, as was requested and without taking into consideration the length of delay at re-trial, the reason for delay, and resulting prejudice to petitioner, etc. Barker v. Wingo, 92 S.Ct. (1972) approximately page 2182. 4/

4/ Monday, June 28, 1982, petitioner received Order (8½ in. x 11 in.) two pages, filed June 25, 1982, in the U.S. Court of Appeals for the Sixth Circuit, before Judges Keith, Krupansky and Phillips, the signature of John P. Hehman, Clerk is on the second page of the Order, Case No. 81-3741, Johnson vs. Marshall, Dist. Ct. No. C-1-81-827. A brief note from the Appeals Court signed by (Mr.) Gary Mc Carthy, Deputy Clerk, was enclosed, too.

Sunday, July 4, 1982, petitioner enclosed the above said Order from the Appeals Court in a large clasp envelope addressed to C.R. Maloy, Business Administrator, SOCF, with instructions to be photocopied 4 times for appendix to this writ. Petitioner gave it to Officer E.R. McJunkin, #649 for delivery; ~~but the Order and photocopies have not been returned to petitioner. Petitioner considers them confiscated by the prison administration.~~

CONCLUSION

Because of an indentical issue, and other subsidiary, and closely related issues, petitioner prays that the Court consolidate for review, hearing and oral argument on the merits, the mandamus and habeas corpus actions herein.

On the basis of defendants' default in the underlying civil rights suit herein petitioner asks the Court to enter judgment in his favor for: $145.000,00 in general damages and $20.000,00---- in punitive damages, with maximum interest allowed by state law commencing with trial schedule date of March 22, 1982, Appendix A.

Issue Order to respondent trial Court to promptly set a trial date and proceed to judgment on the issue of additional damages as prayed for in footnote 2 of page 12 of this writ.

Restore petitioner's full civil rights as an American citizen by ordering his unconditional discharge from state's custody on the claims in the underlying civil rights suit, mandamus and habeas corpus actions herein.